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June 27, 1988

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JUL 25 1988

Mr. John T. MacDonald, Ph. D.
Commissioner
Department of Education
101 Pleasant Street
Concord, New Hampshire 03301

Mr. Everett V. Taylor, Commissioner
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Requirements Imposed Upon School Districts By
1988 New Hampshire Laws, Chapter 278

Gentlemen:

You have asked that this office advise the Departments of Education and Revenue Administration concerning the requirements which local school districts must fulfill in order to accomplish and allocate the expenditure of additional sweepstakes revenue for fiscal years 1988 and 1989 pursuant to N.H. Laws 1988, Chapter 278, (hereinafter referred to as "Chapter 278").

Chapter 278 amends 1987 N.H. Laws, Chapter 400:106 to provide for the distribution to school districts in each of fiscal years 1988 and 1989 of \$6,000,000 in additional sweepstakes revenues for foundation aid, over and above the funds initially appropriated for fiscal years 1988 and 1989. Thus, the 1988 legislation increased the amount of estimated sweepstakes revenue available for foundation aid from \$19,000,000 to \$25,000,000 in fiscal year 1988, and from



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\$21,300,000 to \$27,300,000 in fiscal year 1989. The requests for information received from your departments raise a number of inquiries concerning these funds:

1. HOW WILL THE INCREASED FUNDS APPROPRIATED UNDER CHAPTER 278 BE DISTRIBUTED AND PAID TO SCHOOL DISTRICTS?

The \$6,000,000 increase in the sweepstakes distribution for foundation aid for fiscal year 1988 is determined under the provisions of RSA 198:29 which are in effect for fiscal year 1988, as detailed in 1985 N.H. Laws, 244:12, II(b). 1985 N.H. Laws, 244:2, II(b) provides, in pertinent part, as follows:

II. Notwithstanding any other law to the contrary, the amount of foundation aid paid to school districts which will receive less money in fiscal years 1987 and 1988 under RSA 198:29 than they received in fiscal year 1985 from sweepstakes funds, foundation aid funds, and special education basic aid, combined, shall be the amount the district received of those funds in 1988 reduced by the following amounts, provided that cooperative school districts formed by 2 or more pre-existing districts whose boundaries approximate those of a single township in which they are located shall be treated as a single school district:

. . .

(b) In 1988, $66\frac{2}{3}$ percent of the difference between the amount of foundation aid, sweepstakes funds, and special education basic aid, combined, which the school district received in fiscal year 1985 and the amount which the school district would receive in 1988 under the provisions of this subdivision.

If the amount of foundation aid received by a school district in fiscal year 1988 is equal to or greater than the amount received in fiscal year 1985, then the formula

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prescribed in RSA 198:29 applies without adjustment pursuant to 1985 N.H. Laws, 244:12, II(b). The distribution of the fiscal year 1988 Chapter 278 funds must be made between July 1, 1988 and July 31, 1988. As there are no special provisions made in Chapter 278, RSA Chapter 198 or elsewhere for the adjustment of the fiscal year 1989 foundation aid funds with respect to those amounts received by a school district in fiscal year 1985, compare 1985 N.H. Laws, 244:12, the amount of aid distributed in fiscal year 1989 is determined exclusively by RSA Chapter 198 and any applicable statutes referenced therein. The fiscal year 1989 Chapter 278 funds will be added to the foundation aid appropriation for fiscal year 1989 and distributed to school districts in three payments during fiscal year 1989 in accordance with RSA 198:31.

2. WHAT PROCEDURES MUST BE FOLLOWED IN CONVENING A SPECIAL MEETING OF THE SCHOOL DISTRICT FOR THE PURPOSE OF CONSIDERING CHAPTER 278 FUNDS?

Chapter 278:3, II provides that the additional sweepstakes revenues appropriated for foundation aid may be applied to reduce taxes for calendar year 1988, provided that the school district "votes not to spend all or part of the distribution and votes affirmatively to use the balance to reduce taxes," at an annual or special school district meeting held on or before September 30, 1988. A special meeting of the school district may be convened if, in the opinion of the school board, there is a need for such a meeting or 50 or more voters, or 1/4 of the voters of the district (whichever is less), submit a written application to the school board setting forth the subject matter upon which action is desired. RSA 197:2. Chapter 278 waives the usual requirement of RSA 197:3 that the school board must petition the superior court for permission to hold a special school district meeting with the same authority as a regular (annual) school district meeting.

In the event that a school board unreasonably refuses to call a special meeting after a proper application is made, a justice of the superior court may issue a warrant for the special meeting and cause it to be posted and published. RSA 197:9.¹ Otherwise, the procedures for warning and locating

¹Once it is determined that a special meeting will be held, for any purpose, citizens may petition to have Chapter 278 or other items included on the warrant. RSA 197:6.

the special meeting set forth in RSA 197:4, :5, :5-a, :6, :6-a (1987 Supp.), :7 and :8 shall apply. Likewise, the provisions of RSA Chapter 671 pertaining to the qualifications of voters and the composition of the checklist must be considered in identifying qualified voters for the special meetings permitted pursuant to Chapter 278.

3. WHAT IS THE NUMBER OF VOTERS AND BALLOTS REQUIRED AT SPECIAL OR ANNUAL MEETINGS CONVENED TO CONSIDER THE EXPENDITURE OF CHAPTER 278 FUNDS?

If the school district considers Chapter 278 funds at a special meeting, then any measure respecting the expenditure of funds or the reduction or rescission of any appropriation made at a previous meeting, must be voted upon by ballot by at least 1/20 (5%) of the number of voters who were entitled to vote at the most recent regular school district meeting. N.H. Laws 1988, Chapter 278:3, III. Chapter 278 thus waives the usual requirement of RSA 197:3 that special school district meetings may not raise or appropriate money nor reduce or rescind any appropriation made at a previous meeting unless 1/2 (50%) of the number of voters of the district who were eligible to vote at the last regular meeting cast ballots. There is no minimum number of ballots required for the consideration of Chapter 278 articles which neither raise nor appropriate money nor reduce or rescind a prior appropriation. Similarly, if the treatment of Chapter 278 funds is considered at a regular meeting, then there is no required minimum number of voters.

4. WHAT PROCEDURES MUST A SCHOOL DISTRICT FOLLOW TO ACCOMPLISH THE REDUCTION OF TAXES FOR CALENDAR YEAR 1988?

Chapter 278 affords a school district the option of applying all or part of its share of the twelve million dollar increase in the sweepstakes revenue for foundation aid to reduce taxes for calendar year 1988. In order to accomplish this, the school district must either have already considered the use of its Chapter 278 funds at a regular 1988 school district meeting, or a reconvened session thereof, held on or after April 30, 1988, or hold a special meeting on or before September 30, 1988. The question whether a school district's consideration of Chapter 278 at a regular meeting held during the period from March 1, 1988 through April 29, 1988 might accomplish the reduction of taxes for calendar year 1988

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pursuant to Chapter 278:3, II, is a determination which must be made by the Commissioner of the Department of Revenue Administration on a case-by-case basis, as authorized in RSA 21-J:35 (1987 Supp.).

At the meeting, the voters must vote not to spend all or part of the total distribution, and vote affirmatively to use the balance to reduce taxes for calendar year 1988. There is no requirement articulated in Chapter 278 or any other provision of law respecting the number of voters which must participate in a special school district meeting vote which neither raises nor appropriates money, nor reduces nor rescinds any appropriation made at a previous meeting. However, to the extent that Chapter 278 warrant articles seek to do any of these things the vote upon such articles must be by ballot, and at least 1/20 (5%) of the voters entitled to vote at the last regular meeting preceding the special meeting must submit ballots. If such a meeting is not held on or before September 30, 1988, then the school district loses its option to apply Chapter 278 funds to the reduction of taxes for calendar year 1988.

5. WHAT PROCEDURES MUST A SCHOOL DISTRICT FOLLOW IN ORDER TO EXPEND CHAPTER 278 FUNDS?

Chapter 278 funds are available for expenditure by a school district only if the expenditure is approved at a regular or special meeting conforming to the applicable provisions of RSA Chapters 32 and 197. However, for the purposes of Chapter 278 only, certain provisions of RSA 197:3 are waived. The requirements that a vote at a special meeting to appropriate money be by ballot vote by at least 1/2 (50%) of the number of voters entitled to vote at the most recent regular (annual) school district meeting, and the provisions requiring the school board to petition the superior court to hold a special meeting with the same authority as an annual meeting, do not apply to Chapter 278 funds. 1988 N.H. Laws, 278:3, III. Instead, a ballot vote by 1/20 (5%) of the number of voters who were entitled to vote at the most recent regular school district meeting is sufficient to expend funds pursuant to Chapter 278. Chapter 278 does not impose a time limit upon school districts for the expenditure of Chapter 278 funds. However, the failure of a school district to act upon the expenditure of the excess funds made available under Chapter 278 before June 30, 1989 will result in the excess funds appearing on the Annual Financial Report for the fiscal year

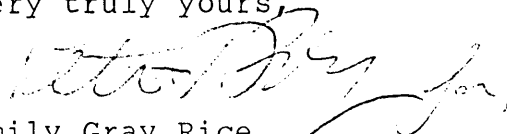
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ending June 30, 1989 as an unreserved fund balance, and result in such funds being applied to reduce taxes in the fall of 1989.

I trust that the above information adequately responds to your inquiries. Please do not hesitate to contact me if this office can be of any further assistance to you in this or any other matter.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Emily Gray Rice", written over the typed name.

Emily Gray Rice
Assistant Attorney General

EGR:ab

cc: Lorraine Racette
Bruce Ryan

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